IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

IN RE:	§	**CASE NUMBER**
NICOLE JIMENEZ	§	**10-80693-G3-13**
DEBTOR	§	
NICOLE JIMENEZ, now known as NICOLE ROGERS	§	
PLAINTIFF	§	
v.	§	**ADVERSARY NUMBER**
HECTOR N. JIMENEZ, JR. AND NAVIENT SOLUTIONS, LLC, doing business as, NAVIENT	§	________________
DEFENDANT	§	

ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Debtor, NICOLE JIMENEZ, now known as, NICOLE ROGERS, hereinafter called Plaintiff, complaining of and about HECTOR N. JIMENEZ, JR. and NAVIENT SOLUTIONS, LLC., doing business as, NAVIENT, hereinafter called Defendants, and for cause of action shows unto the Court the following:

PARTIES AND SERVICE

1. Plaintiff, NICOLE JIMENEZ, also known as Cheyenne Nicole Jimenez or Nicole N. Jimenez, and now known as, NICOLE ROGERS, is a an individual citizen of the United States and the State of Texas and resides in Galveston County, Texas.

2. Defendant, HECTOR N. JIMENEZ, JR., is a an individual citizen of the United States and

the State of New York and may be served at 1201 Gates Avenue, Apt. 2C, Brooklyn, New York 10462-2840.

3. Defendant, NAVIENT SOLUTIONS, LLC., doing business as, NAVIENT, is a foreign limited liability company, having its principal place of business at 2001 Edmund Halley Drive, Reston, Virginia 20191, and may be served with process by serving its Registered Agent, CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701-4234.

JURISDICTION, VENUE, CORE PROCEEDING, AND CONSTITUTIONAL AUTHORITY TO ENTER A FINAL ORDER

4. Jurisdiction: This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157(a) and 1334.

5. Venue: Venue is proper for this Court pursuant to 28 U.S.C. §1409.

6. Core Proceeding: This Adversary proceeding is a core proceeding as defined under 28 U.S.C. §157(b)(2)(B) and (I) and Rule 7001 of the Federal Rules of Bankruptcy Procedure.

7. Authority to Enter A Final Order: This adversary proceeding arises under alleged violations of the core bankruptcy right imposed by an express Bankruptcy Code provision, relief sought by the Plaintiff is brought pursuant to 11 U.S.C. §523(a)(8) and 11 U.S.C. §502(b)(1) and/or §105, state law has no equivalent to these statutes, and the dispute in question is not based upon state common law, and/or the subject matter of this adversary proceeding involves the "public rights" exception to the general rule that only an Article III judge may exercise adjudicative authority. Therefore, this Bankruptcy Court has a right to issue a final judgment in this case in accordance with the exceptions in *Stern v. Marshall*, 131 S.Ct. 2594 (2011). Plaintiff consents to the entry of a final order or a final judgment by this Court.

NATURE OF ACTION

8. Plaintiff seeks a determination that the certain debts made the subject of this Complaint are dischargeable under 11 U.S.C. § 523(a)(8) to prevent the miscarriage of justice and to

prevent the perpetuation of fraud by Hector N. Jimenez, Jr., and as for grounds for therefor would show the following:

FACTS

9. On November 30, 2010, Plaintiff filed this Case # 10-80693-G3-13; *In Re: Nicole Jimenez*, In the United States Bankruptcy Court for the Southern District of Texas, Galveston Division (the "Bankruptcy Case").

10. In the Bankruptcy Case at Schedule F, Plaintiff listed the following student loans for creditor Sallie Mae, 11100 USA Parkway, Fishers, IN 46037:

    a. Sallie Mae, account #x2003 in the amount of $244,351;

    b. Sallie Mae, account #x2004 in the amount of $3,700.

11. On July 13, 2011, the Sallie Mae Trust filed a Proof of Claim #9 for $3,286.97 for account #2004, but did not file a proof of claim for the larger amount for account #x2003.

12. On August 17, 2012, the Chapter 13 Plan proposed by the Plaintiff was confirmed.

13. On December 23, 2015, the Court signed a Discharge Order.

14. On April 4, 2016, the Court signed an Order Closing the Bankruptcy Case and discharging the Trustee.

15. After the case was closed, Plaintiff learned for the first time that her ex-husband, Hector N. Jimenez, Jr., had consolidated his student loans with the her student loans, without her knowledge, consent or signature. By doing so, he fraudulently attempted to bind the Plaintiff, jointly and severally, to a consolidated student loan debt having a current estimated principal balance of $292,007.54[1] (the "Consolidated Student Loan").

16. Plaintiff has never contested the fact that she applied for student loans in her name. However, she vehemently denies applying for and agreeing to pay for the student loans of her ex-husband, Hector N. Jimenez, Jr.

---

[1]Estimated Total Loan Amount to be paid according to Navient is $463,052.46.

17. Had Plaintiff known of her ex-husband's forgery, she would have addressed this issue earlier. As it stands now, it appears that the current student loan creditor, Navient, was waiting for the discharge in Plaintiff's case to surprise her with this debt.

18. By way of background facts:

a. On November 13, 1998, Plaintiff married Hector N. Jimenez, Jr.

b. On information and belief, on February 27, 2003, Hector N. Jimenez, Jr. made application to the Federal Family Education Loan Program (FFELP) for a husband and wife student loan consolidation. At that time, Nicole Jimenez had an aggregate principal amount due of about $100,000 on her student loans ("Nicole's Student Loans"). Plaintiff's husband also had an aggregate principal amount due of about $100,000 on his student loans ("Hector's Student Loans"). After Hector N. Jimenez, Jr. applied for the student loan consolidation, he never told Plaintiff what he had done. The total of Nicole's Student Loans and Hector's Student Loans shall be referred to hereinafter as (the "Consolidated Student Loans").

c. On or about October 10, 2009, Plaintiff separated from her ex-husband.

d. Ultimately, on February 5, 2010, Plaintiff filed for a divorce in Cause Number 10-FD-0295; *In the Matter of the Marriage of: Nicole N. Jimenez and Hector N. Jimenez, Jr., and In the Interest of: Mateo Narciso Jimenez and Isaiah Emmanuel Jimenez*, in the 306th District Court, Galveston County, Texas (the "Divorce Case").

e. On April 14, 2010, the family court granted a Final Decree of Divorce in the Divorce Case.

19. Plaintiff only became aware of the student loan consolidation when Navient made demand on her to pay the entire balance of the Consolidated Student Loans, over $463,000.

20. On information and belief, Navient is the current holder of the Consolidated Student Loans.

21. The Plaintiff never requested or signed the application for the student loan consolidation. Recently, Plaintiff obtained a copy of the student loan consolidation application prepared by

Hector N. Jimenez, Jr.. At that time it became apparent that Plaintiff's ex-husband forged her name on the application.

22. Plaintiff tried, without success, to administratively challenge the Consolidated Student Loans with Navient, by explaining the forgery by her ex-husband.

23. On May 8, 2017, Plaintiff filed a Proof of Claim (the "Claim")[2] on behalf of Navient for purposes of this Adversary.

11 U.S.C. §523(a)(8)

24. Plaintiff adopts and incorporates by reference the foregoing allegations and would show the following. Payment of the Consolidation Student Loans imposes an undue hardship upon the Plaintiff, now and in the future. Therefore, Plaintiff requests that the Consolidated Student Loans made the subject of this Complaint be declared by this Court to be a dischargeable pursuant to 11 U.S.C. § 523(a)(8).

USURY

25. Without waiving the foregoing paragraphs, Plaintiff adopts and incorporates by reference the foregoing allegations and would alternatively show the following. Navient has contracted for, charged or received interest and other charges in excess of the amount authorized by law. The maximum rate of interest that Navient was authorized to charge on such transactions ranges from 3.46% to 5.0% on the original principal amount of Nicole's Student Loans. By charging Plaintiff with the entire principal of the Consolidated Student Loans, Navient has contracted for and charged an amount, when measured against the true principal amount of Nicole's Student Loans, which is in excess of the amount allowed by law. Furthermore, the difference between the amount charged on the Consolidated Student Loans and the amount actually advanced to the Debtor constitutes, in itself, interest charges that are in excess of the legal maximum amount.

26. On July 12, 2016, Plaintiff delivered to Navient or Navient's authorized agent written notice,

---

[2]Proof of Claim #10 attached, marked Exhibit A, and made a part hereof for all purposes.

advising said Defendant in reasonable detail of the nature and amount of Navient's violation of the usury laws. Navient has failed to correct such violation in the manner provided by law.

27. Plaintiff further shows that the amount of interest Defendant Navient charged for, charged, or received, or any combination of these prohibited acts is greater than twice the maximum amount authorized by law. As a result, Plaintiff is entitled to a declaration from this Court that Navient has forfeited to Plaintiff all principal and all interest in connection with this transaction. By virtue of this forfeiture, Plaintiff is entitled to restitution of all sums paid to Navient by Plaintiff in connection with this transaction.

28. Plaintiff has been required to retain the undersigned attorney to institute this action. In addition to the amounts described above, Plaintiff is entitled to recover from Defendant Navient reasonable attorney's fees and costs.

FRAUD

29. Without waiving the foregoing paragraphs, Plaintiff adopts and incorporates by reference the foregoing allegations and would alternatively show the following. Hector N. Jimenez, Jr. was Plaintiff's husband at times relevant to this complaint. There was a fiduciary relationship between Plaintiff and her husband. Hector N. Jimenez, Jr. forged Plaintiff's name on the application for the Consolidated Student Loans to Plaintiff's detriment and never disclosed this material fact to her. His silence is a material misrepresentation of the facts about the true balance of Nicole's Student Loans. Plaintiff trusted her husband and would have never suspected that he would maliciously conceal such important financial information from her.

30. Hector N. Jimenez, Jr.'s misrepresentation and concealment was false.

31. Hector N. Jimenez, Jr. concealed facts about the student loan consolidation and by his silence made such misrepresentation with the knowledge that it was false or made it recklessly, as a positive assertion with the knowledge of the truth.

32. Hector N. Jimenez, Jr. concealed facts about the student loan consolidation and by his

silence made such misrepresentation with the intent that Plaintiff would act upon it. Even when Plaintiff and Hector N. Jimenez, got divorced and divided up the assets and liabilities of their marital estate, he remained silent.

33. Plaintiffs relied upon the representations made by Hector N. Jimenez, Jr. and filed the Bankruptcy Case in good faith, not realizing her ex-husband's sinister act.

34. As a direct and proximate cause of Hector N. Jimenez, Jr.'s concealment and fraud, Plaintiff suffered damages.

35. Plaintiff has lost money and time in dealing with Hector N. Jimenez, Jr.'s fraud. Furthermore, she has severe emotional distress over her ex-husband's actions.

36. Plaintiff requests rescission of any agreement related to the Consolidation Student Loans. Furthermore, Plaintiff is therefore entitled to have judgment against Hector N. Jimenez, Jr. based upon fraud.

37. Plaintiff has been required to retain the undersigned attorney to institute this action. In addition to the amounts described above, Plaintiff is entitled to recover from Defendant Hector N. Jimenez, Jr. reasonable attorney's fees and costs.

OBJECTION TO PROOF OF CLAIM

38. Plaintiff files as part of this Adversary, an Objection to the Claim filed on behalf of Navient, and would show that such Claim is unenforceable against the Debtor and the Property of the Debtors, under applicable law for a reason other than because such Claim is contingent or unmatured. 11 U.S.C. §502(b)(1).

39. Plaintiff requests that this Court deny the Claim in total as filed, and/or require Navient to amend its Claim in accordance with the findings of this Court in a hearing to be scheduled and conducted.

RELIEF SOUGHT

40. **WHEREFORE, PREMISES CONSIDERED**, Plaintiff, respectfully prays that the Defendants be cited to appear and answer herein, and that upon a final hearing of the cause,

the Court will:

41. Enter judgment for the Plaintiff against Defendants;

1. Find that the debt made the subject of this Complaint is dischargeable pursuant to 11 U.S.C. § 523(a)(8);

2. Find that Defendant Navient take nothing against Plaintiff on its Proof of Claim;

3. Find that all principal and interest be cancelled on the debt made the subject of this Complaint;

4. Alternatively, find that any agreement related to the Consolidated Student Loans be rescinded; and

5. Find that Plaintiff be granted judgment for all reasonable and necessary attorney's fees incurred by or on behalf of Plaintiff herein, including all fees necessary in the event of an appeal of this cause to the District Court, the Court of Appeals and the Supreme Court of the United States, as the Court deems equitable and just;

6. Award pre- and post-judgment interest to Plaintiff;

7. Award costs of Court to Plaintiff; and

8. Grant such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted,

H. Brad Parker, P.C.

By: /s/ H. Brad Parker
H. Brad Parker
Attorney-in-Charge
Texas Bar No. 15487100
2180 North Loop West, Suite 510
Houston, Texas 77018
Tel. (713)892-5588
Fax. (713)892-5598
Bparker@parkerlawpc.com
Attorney for Plaintiff